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17. ABSTRACT (MAX. 250 WORDS)

Conclusions of Judge Sweeney's review of the Springfield, Massachusetts, ruling are presented. There was no deliberate intention of the school authorities to segregate the schools; segregation resulted from a rigid adherence to the neighborhood plan of school attendance, which had been in effect since the latter part of the nineteenth century in Springfield. The schools with a majority of Negro students ranked lowest in achievement ratings based on the Iowa Test of Basic Skills. When students transferred from these schools, they had difficulty keeping up with other students. He also stated that racial concentration was an educational as well as a constitutional problem; therefore, the school system should present a plan to eliminate as much racial concentration in its elementary and junior high schools as possible.

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THE SPRINGFIELD RULING

Judge George C. Sweeney

Opinion by Judge Sweeney, January 11, 1965, in Barksdale *v.* Springfield (Mass.) School Committee, *Civil Action No. 64-8-S, United States District Court, District of Massachusetts. [For background, see* Integrated Education, *December, 1964-January, 1965, p. 7]*

This class action was brought in behalf of the minor Negro children who reside in the City of Springfield, Massachusetts. They seek 1) a declaratory judgment that the defendants, by assigning plaintiffs to racially segregated schools, are denying to the plaintiffs their rights under the Fourteenth Amendment to the Constitution of the United States, and 2) an injunction to bar the defendants from continuing to violate these rights.

The Springfield school system is composed of fifty schools, including four high schools, grades 9-12 (which are not involved in this action); eight junior high schools, grades 7-9; thirty-seven elementary schools, K-6; and one elementary school, K-2. The elementary and junior high schools are organized on the neighborhood plan. Some of them, as will be shown, have a heavy concentration of Negro children, while others are attended by only white children. It is the contention of the plaintiffs that the racial imbalance in some of the schools is segregation in the constitutional sense, and within the decision of the Supreme Court in *Brown v. Board of Education,* 347 U.S. 483 (1954); and that continued adherence to the neighborhood policy is tantamount to a law compelling segregation. The plaintiffs claim also that the defendants have deliberately drawn district lines and assigned pupils so as to segregate them by race.

I find that there is no deliberate intent on the part of the school authorities to segregate the races. If segregation exists, it results from a rigid adherence to the neighborhood plan of school attendance.

To the credit of the City of Springfield and its school authorities, the School Committee recognized, in September 1963, that racial imbalance did exist in some schools, "that integrated education is desirable," and it resolved to "take whatever action is necessary to eliminate to the fullest extent possible, racial concentration in the schools within the framework of effective educational procedures." Accordingly, it voted to take immediate action to prepare, by March 1964, proposals designed to solve the problem. Unfortunately, this law suit intervened and the defendants discontinued whatever work they had been doing pending the outcome of this litigation.

> This decision indicates a growing awareness on the part of the judiciary of the impact of racial imbalance on equal educational opportunities and an awareness that maintenance of the racial unbalanced school is inconsistent with the Federal Constitution's requirement for desegregated education.
>
> Robert L. Carter, NAACP general counsel, January 12, 1965

Since the latter part of the nineteenth century, attendance at elementary and junior high schools in Springfield has been organized on the neighborhood plan. District lines are drawn with reference to the location and capacity of the various schools and take into account the safety and convenience of the children in going to

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and from school. In general, children are required to attend the school within the district in which they live. While there are exceptions to this rule and a few optional areas, and where transfers are permitted when schools are overcrowded, I find that these exceptions are not designed or used to segregate the children by race. I find further that district lines have been drawn in conformity with the criteria mentioned above and not in order to segregate children by race.

However, segregation, in the sense of racial imbalance, exists in the Springfield school system. While the experts did not agree on what constitutes racial imbalance in general, or in Springfield in particular, it is unnecessary to define the term. In the light of the ratio of white to non-white in the total population in the City of Springfield, I do find, however, that a non-white attendance of appreciably more than fifty per cent in any one school is tantamount to segregation. Although several members of the School Committee denied any knowledge of racial patterns and racial concentration in housing and, consequently, in the schools, census data and statistics compiled by employees of the school department at the request of the School Committee indicate that at least seven elementary schools and one junior high school have a majority of Negro or Negro and Puerto Rican students, while other schools are one hundred per cent white . . . .

The total elementary school enrollment for the 1963-64 school year was 19,417, of which 15,588 or 80.3% were white; 3,386 or 17.4% were Negroes and 443, or 2.3% Puerto Rican. This latter group is not involved in this action and will be disregarded for the purposes of this opinion. Of the 3,386 Negroes in all of the thirty-eight elementary schools, all but 595 are enrolled in eight of them; i.e., the Homer, Hooker, Brookings, Deberry, Eastern Avenue, Ells, Tapley and Carew Schools.

Of the 6,546 students enrolled in the eight junior high schools, 946 are Negroes. 702 of that number are enrolled in the Buckingham Junior High School and 117 in the Chestnut Junior High School, making a total of 819. The remaining 127 pupils of the junior high schools are distributed through the other six junior high schools. Incidentally, of 51 Puerto Rican junior high school students, all are enrolled in the Chestnut Street Junior High School.

From the evidence, I find that those schools in which the vast majority of Negro students are enrolled consistently rank lowest in achievement ratings based on the Iowa Test of Basic Skills. Those students, when transferred to other schools, had difficulty keeping abreast with their contemporaries. Special programs in science and French for gifted children who have attained a high achievement level have had few, and sometimes no, Negro participants.

While it is not possible to determine how much of this is the result of home environment and how much is attributable to schools and teachers, these facts, nonetheless, bear out the testimony of the plaintiffs' expert, Dr. Thomas F. Pettigrew, that racially imbalanced schools are not conducive to learning, that is, to retention, performance, and the development of creativity. Racial concentration in his school communicates to the Negro child that he is different and is expected to be different from white children. Therefore, even if all schools are equal in physical plant, facilities, and ability and number of teachers, and even if academic achievement were at the same level at all schools, the opportunity of Negro children in racially concentrated schools to obtain equal educational opportunities is impaired and I so find.

The defendants argue, nevertheless, that there is no constitutional mandate to remedy racial imbalance. *Bell v. School City of Gary, Indiana*, 324 F. 2d 209 (7th Cir. 1963). But that is not the question. The question

is whether there is a constitutional duty to provide equal educational opportunities for all children within the system. While *Brown* answered that question affirmatively in the context of coerced segregation, the constitutional fact—the inadequacy of segregated education—is the same in this case, and I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative state action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact. *Blocker v. Board of Education of Manhasset, New York*, 226 F. Supp. 208 (E.D. N.Y. 1964) *Branche v. Board of Education*, 204 F. Supp. 150 (E.D. N.Y.) 1962), *Jackson v. Pasadena City School District*, 59 Cal. 2d 876, 382 P. 2d 878 (1963), *Taylor v. Board of Education*, 191 F. Supp. 181, 187 (S.D. N.Y.) (dictum) aff'd 294 F. 2d 36 (2d Cir.) cert. den. 368 U.S. 942 (1961). I cannot accept the view in *Bell* that only forced segregation is incompatible with the requirements of the Fourteenth Amendment, nor do I find meaningful the statement that "(t)he Constitution . . . does not require integration. It merely forbids discrimination." 324 F. 2d at 214. In view of the disparity in population and school attendance, there cannot be equal representation of white and Negro students in each school, but there must be no segregated schools.

This court recognizes and reiterates that the problem of racial concentration is an educational, as well as constitutional, problem and, therefore, orders the defendants to present a plan no later than April 30, 1965, to eliminate to the fullest extent possible racial concentration in its elementary and junior high schools within the framework of effective educational procedures, as guaranteed by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The plaintiffs shall aid the formulation of a plan with expert assistance and otherwise insofar as the defendants request such aid. The court retains jurisdiction of this case until a plan has been formulated, approved by the the court, and implemented.

The foregoing opinion constitutes the Findings of Fact, Conclusions of Law, and Order of the Court.

> The most recent court cases [in the South] have clearly stated that is the responsibility of the school boards, and not Negro parents, to initiate the desegregation process. The defense sometimes offered by the school boards that the Negro pupils have not applied for admission to white schools is being given little or no consideration by the federal courts today.
>
> Ruby G. Martin,
> December 7, 1964

> I have the utmost confidence that when the . . . question reaches the Supreme Court of the United States, namely, is it permissible for school boards, in the exercise of their discretion, to obtain better education, to use a racial action, to take race into consideration, to desegregate the *de facto* segregation group, I personally have no doubt whatever that the Supreme Court will say, "It is permissible, of course, for the same basic sociological reason that we decided in the school segregation cases in 1954."
>
> Fr. William J. Kenealy,
> March 21, 1964

That the Commission recommend to the President and the Congress that the Civil Rights Act of 1964 be amended so as to make available to school systems undertaking to correct racial imbalance in public schools the same Federal aids available to school systems seeking to abandon segregation previously required by law, including technical assistance in coping with special educational problems occasioned by the correction of racial imbalance, and institute training and Federal grants to enable teachers and guidance counselors to improve their understanding of minority group children and the relation of their heritage and environment to the learning process and the development of their latent individual abilities.

Recommendation, Massachusetts State Advisory Committee to the United States Commission on Civil Rights, January, 1965

NORTH AND SOUTH

The difference in the North and South is the difference between a neurosis and a psychosis. We're sick people. Racism has made us sick at every level of our culture. We *kill*, and they don't. In the North, it's a matter of blindness, prejudice, and indifference. You can be merely prejudiced without killing people, but in the South we kill them.

Then, in the South, not one of us has escaped. In the North, millions have. You can live there all your life and never see Harlem; it won't hurt you, you're not responsible for it any more than you are for China. But we can't get away from it in the South. Many of us have tried to. But every time you walk out your door, there are the signs, the walls, the inhuman, dehumanizing separation, to manipulate you. I could cry when I think how white children have suffered from this.

The North has a tremendous urban problem complicated by race. But we sent the Negroes up North, we drove them up there. The North didn't write letters of invitation asking for them. Now, our people whom we drove away are metamorphosed into victims of the ghetto, poverty, crime--and enough problems to beat us all to death.

Where the North was disturbed in its own psychic organization showed in Yankee willingness to be foreign missionaries to us, instead of home missionaries to their own black ghettos, blaming the South, shaking off their own responsibility on the South. This maimed the personalities of most Northerners with false moral complacency.

Lillian Smith, *Progressive*, February, 1965